

Small Business Administration

§ 102.24

(3) Pertinent to and within the scope of an authorized law enforcement activity.

§ 102.23 Publication in the Federal Register—Notices of systems of records.

(a) *Notices of systems of records to be published in the FEDERAL REGISTER.* (1) The SBA shall publish in the FEDERAL REGISTER upon establishment or revision a notice of the existence and character of any new or revised systems of records. Unless otherwise instructed, each notice shall include:

- (i) The name and location of the system;
- (ii) The categories of individuals on who records are maintained in the system;
- (iii) The categories of records maintained in the system;
- (iv) Each routine use of the records contained in the system, including the categories of users and the purpose of such use;
- (v) The policies and practices of the office regarding storage, retrievability, access controls, retention, and disposal of the records;
- (vi) The title and business address of the SBA official who is responsible for the system of records;
- (vii) A statement that SBA procedures allow an individual, at his or her request, to determine whether a system of records contains a record pertaining to him or her, to review such records and to contest or amend such records, located in sections 102.25 through 102.29 of these regulations.
- (viii) A statement that such requests may be directed to the SBA's FOI/PA Office, 409 3rd St., SW., Washington, DC 20416 or faxed to 202-205-7059; and
- (ix) The categories of sources of records in the system.

(2) Minor changes to systems of records shall be published annually.

(b) *Notice of new or modified routine uses to be published in the FEDERAL REGISTER.* At least 30 days prior to disclosing records pursuant to a new use or modification of a routine use, as published under paragraph (a)(1)(iv) of this section, each SBA office shall publish in the FEDERAL REGISTER notice of such new or modified use of the information in the system and provide an

opportunity for any individual or persons to submit written comments.

§ 102.24 Requests for access to records.

(a) *How made and addressed.* An individual, or his or her legal guardian, may make a request for access to an SBA record about himself or herself by appearing in person or by writing directly to the SBA office that maintains the record or to the FOI/PA Office by mail to 409 3rd St., SW., Washington, DC 20416 or fax to 202-205-7059. A request received by the FOI/PA Office will be forwarded to the appropriate SBA Office where the records are located.

(b) *Description of records sought.* A request for access to records must describe the records sought in sufficient detail to enable SBA personnel to locate the system of records containing them with a reasonable amount of effort. A request should also state the date of the record or time period in which the record was compiled, and the name or identifying number of each system of records in which the requester believes the record is kept. The SBA publishes notices in the FEDERAL REGISTER that describe its systems of records. A description of the SBA's systems of records also may be found at <http://www.sba.gov/foia/systemrecords.doc>.

(c) *Verification of identity.* Any individual who submits a request for access to records must verify his or her identity. No specific form is required; however, the requester must state his or her full name, current address, and date and place of birth. The request must be signed and the requester's signature must either be notarized or submitted under 28 U.S.C. 1746. This law permits statements to be made under penalty of perjury as a substitute for notarization, the language states:

(1) If executed outside the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). Signature"; or

(2) If executed within the United States, its territories, possessions or commonwealths: "I declare (or certify,

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verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). Signature”.

(d) *Verification of guardianship.* When making a request as a legal agent or the parent or guardian of a minor or as the guardian of someone determined by a court to be incompetent, for access to records about that individual, the requester must establish:

(1) The identity of the individual who is the subject of the record, by stating the name, current address, date and place of birth, and, at the requester's option, the social security number of the individual;

(2) The requester's own identity, as required in paragraph (c) of this section;

(3) That the requester is the legal agent or parent or guardian of that individual, which may be proven by providing a copy of the individual's birth certificate showing his parentage or by providing a court order establishing guardianship; and

(4) That the requester is acting on behalf of that individual in making the request.

§ 102.25 Responsibility for responding to requests for access to records.

(a) *In general.* Except as stated in paragraphs (c), (d), and (e) of this section and in §102.24(a), the office that first receives a request for access to a record, and has possession of that record, is the office responsible for responding to the request. That office shall acknowledge receipt of the request not later than 10 days (excluding Saturdays, Sundays, and legal public holidays) after the date of receipt of the request in writing. In determining which records are responsive to a request, an office ordinarily shall include only those records in its possession as of the date the office begins its search for them. If any other date is used, the office shall inform the requester of that date.

(b) *Authority to grant or deny requests.* The Program/Support Office Head, or designee, is authorized to grant or deny any request for access to a record of that office.

(c) *Consultations and referrals.* When an office receives a request for access to a record in its possession, it shall

determine whether another office, or another agency of the Federal Government, is better able to determine whether the record is exempt from access under the Privacy Act. If the receiving office determines that it is best able to process the record in response to the request, then it shall do so. If the receiving office determines that it is not best able to process the record, then it shall either:

(1) Respond to the request regarding that record, after consulting with the office or agency best able to determine whether the record is exempt from access and with any other office or agency that has a substantial interest in it; or

(2) Refer the responsibility for responding to the request to the office best able to determine whether the record is exempt from access or to another agency that originated the record (but only if that agency is subject to the Privacy Act). Ordinarily the office or agency that originated a record will be presumed to be best able to determine whether it is exempt from access.

(d) *Law enforcement information.* Whenever a request is made for access to a record containing information that relates to an investigation of a possible violation of law and that was originated by SBA's Office of the Inspector General (OIG) or another agency, the receiving office shall refer the responsibility for responding to the request regarding that information to either SBA's OIG or the other agency “depending on where the investigation originated.”

(e) *Classified information.* Whenever a request is made for access to a record containing information that has been classified by or may be appropriate for classification by another office or agency under Executive Order 12958 or any other executive order concerning the classification of records, the receiving office shall refer the responsibility for responding to the request regarding that information to the office or agency that classified the information, should consider the information for classification, or has the primary interest in it, as appropriate. Whenever a record contains information that has been derivatively classified by an office